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Court : Madhya Pradesh

Decided On : Nov-12-1998

Reported in : I(1999)ACC317; 2000ACJ559

Judge : Bashir Ahmed Khan and ;Shambhoo Singh, JJ.

Appeal No. : M.A. No. 84 of 1992

Appellant : Babu

Respondent : Kacharu and ors.

Advocate for Def. : M. Jain and ; L.P. Bhargava, Advs.

Advocate for Pet/Ap. : S. Sharma, Adv.

Judgement :

Shambhoo Singh, J.

1. This appeal is directed by the claimant against the award dated 26.11.1991 passed by IInd Motor Accidents Claims Tribunal, Ratlam, in Claim Case No. 42 of 1987.

2. The claimant's case was that his wife deceased Sugnabai, aged about 18 years, was engaged on 18.8.1987 as labourer on tractor-trolley bearing registration No. 88/75 owned by respondent No. 2 and insured with respondent No. 3. Near village

Ravti, she fell down from the trolley as a result of rash and negligent driving by respondent No. 1 and died instantaneously. The claimant filed claim case seeking compensation of Rs. 1,66,200. The respondents resisted the claim on the ground that the tractor-trolley was not driven rashly and negligently. It was averred by respondent No. 3 that respondent No. 1 driver had no valid licence, therefore, it was not liable to pay compensation. The Tribunal awarded compensation of Rs. 15,000. It exonerated respondent No. 3 insurance company from the liability of making payment of compensation holding that the respondent No. 1 driver had no valid licence. The claimant has preferred this appeal for enhancement of compensation amount and also against exoneration of the insurance company.

3. Mr. Sharma, learned counsel for the appellant submitted that the amount of Rs. 15,000 was hopelessly inadequate. In view of the provisions of payment of Rs. 50,000 under no fault liability in the Motor Vehicles Act, 1988, the appellant was entitled to compensation of more than Rs. 1,00,000. He contended that the Tribunal committed error in exonerating the insurance company, as insurance company failed to prove that the respondent No. 1 had no valid licence. On the other hand, Mr. Jain, learned counsel for respondent Nos. 1 and 2, submitted that the respondent No. 1 had valid licence. Mr. Bhargava, learned counsel for the respondent No. 3, insurance company, supported the finding of the Tribunal that respondent No. 1 had no valid licence and the insurance company has been rightly exonerated.

4. We considered the arguments advanced by counsel for both sides and perused the record. The Tribunal in view of the evidence of respondent No. 1 Kacharu that in giving side to other vehicle, balance was lost and on the basis of maxim res ipsa loquitur, rightly held that he drove the aforesaid tractor-trolley rashly and negligently, as a result of which Sugnabai fell down from the trolley and died.

5. Now the question is as to whether the appellant deserves enhancement of compensation amount. The claimant Babu, AW 2 and his father Kodar, AW 3, stated that Sugnabai was earning Rs. 12 per day as labourer. But the witnesses of non-applicants/respondents, specially Binja, NAW 6, stated that Sugnabai was earning Rs. 5-6 per day and not Rs. 10-12. On this evidence, the Tribunal held

that the income of the deceased was Rs. 360 per month. It held that the claimant was not dependent on the income of the deceased, therefore, he was not entitled to compensation, however, it awarded compensation of Rs. 15,000 under Section 92-A of the Motor Vehicles Act under no fault liability. This view is wrong. The appellant husband is a legal heir of the deceased wife. She was contributing her earnings to the family apart from her domestic services. Therefore, husband is entitled to compensation for the damage caused to him by the death of his wife. [See M.P. Electricity Board v. Ram Mohan Shrivastava 1998 ACJ 651 (MP)].

6. From the above evidence, it is proved that the deceased Sugnabai was earning Rs. 5-6 per day and Rs. 180 per month. After deducting one-third of it for personal expenses of the deceased, the dependency comes to Rs. 120 per month, and yearly Rs. 1,440. Keeping in view the age of the deceased which was 18 years, multiplier of 18 is selected, on application thereof, the amount of compensation comes to Rs. 25,920. But the fact that the amount of compensation of interim award payable under Section 140 of the Act under no fault liability, was raised to Rs. 50,000 vide Amending Act 54 of 1994 which came into force on 14.11.1994, indicates the intention of legislature that human life cannot be valued less than Rs. 50,000. This court in Devji v. Anwarkhan 1989 ACJ 567 (MP), observed that while deciding claim cases in appeals, the minimum limit fixed by Parliament should be considered. The same view was expressed by D.B. of this court in case of Karuram v. Omprakash 1989 ACJ 941 (MP) and Bhagwandas v. National Insurance Co. Ltd. 1990 ACJ 495 (MP). A Division Bench of this court in case of Dev Chand v. Babulal Faujdar Bus Service 1997 ACJ 392 (MP), awarded Rs. 50,000 for the death of child in accident which occurred on 9.5.1985 much before the above amendment. Under the circumstances, we award Rs. 50,000 as compensation to the appellant for the death of his wife Sugnabai.

7. The defence of the respondent insurance company was that the respondent driver had no valid licence, thus, the respondent owner of the offending vehicle committed breach of the terms and conditions of the insurance policy and, therefore, it was not liable to pay compensation. It is settled that the burden of proving breach of terms and conditions of insurance policy lay on insurance company. In this case, the insurance company could not discharge this burden.

Respondent Nos. 1 and 2 had pleaded in their written statements that respondent No. 1 had valid licence for driving tractor. Not only this, Kacharu examined himself and stated on oath that he had driving licence which he had obtained from Rajasthan and had given it to his advocate. It is true that the licence was not produced by the respondent No. 1 but the insurance company did not take any step to get it produced. No notice was served on respondent No. 1 asking him to produce it nor it led any evidence to prove that he had no licence. Under these circumstances, the learned Tribunal wrongly held that the insurance company was not liable to pay compensation.

8. In the result, the appeal is partly allowed. The impugned award is modified and it is directed that the respondents shall pay severally and jointly Rs. 50,000 (after adjusting the amount already deposited with proportionate interest) to the appellant-claimant with interest at the rate of 12 per cent per annum from the date of filing of claim application, i.e., 17.11.1987 till realisation within two months from the date of the receipt of the copy of this order. No order as to costs.

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